

STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission

DOCKET 02-AFC-1
DATE _____
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In the Matter of:) Docket No. 02-AFC-1
)
Application for Certification for the)
BLYTHE ENERGY PROJECT, PHASE II)
_____)

**Testimony of Michael E. Boyd on the Transmission Interconnect
for the Blythe Energy LLC, Project Phase II**

Introduction

Carmela Garnica and her family are residents of Blythe California and members in good standing of CALifornians for Renewable Energy, Inc. (CARE). Carmela has asked me to provide testimony on the adequacy and feasibility of the transmission interconnect for the Blythe Energy LLC, Project Phase II. A Declaration and statement of my qualifications is attached. I am an officer of the CARE, and I am authorized to make this verification on its behalf. The statements in this document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct. I respectfully ask that you accept this testimony into your evidentiary records.

Procedural Background

On May 4, 2005 the Energy Commission's Staff filed a Motion to Compel the Applicant to submit Certain Information on the proposed transmission interconnect configuration. The Staff's Motion to Compel points to the Applicant's lack of sufficient transmission capacity to handle the 520 MW load of the existing Blythe Energy LLC, Project Phase I. How then does the applicant plan to handle the additional 520 MW load of the Blythe Energy LLC, Project Phase II?

The transmission system situation in the vicinity of BEP II is complex and constrained. Currently, BEP I is only able

deliver approximately 100 megawatts (MW) (out of 520 MW the plant is capable of generating) on a “consistent and economically predictable basis” to southern California under long-term transmission arrangements.¹ Moreover, the existing system can only accommodate approximately 70 MWs of BEP II’s 520 MW power output²; thus, unless critical changes are made to the system, the majority of BEP II’s power will be stranded. No other application reviewed by the Commission has involved transmission constraints to this extent. Several transmission lines are currently being proposed in the area, including one proposed by BEP I to resolve its transmission problems. It is possible that one of these lines could also relieve BEP II’s constraints. However, staff believes this is questionable and without the necessary information it would be impossible to confirm this.

Blythe Energy Project transmission line modifications

The addition of the Blythe Energy Project transmission lines, which will be owned by Blythe Energy LLC, (“Blythe Energy”), is a proposed transmission line modification that would allow electrical output from the Blythe Energy Project (BEP) Phase I and Phase II to be delivered to the southern California ISO-controlled electrical transmission system. As a “merchant power generator” Blythe Energy is the owner of the, a 520-megawatt (MW) natural gas fired electric-generating facility situated within the City of Blythe, California.

The line as proposed is described as follows:

Buck to Julian Hinds Transmission Line Component:

- Upgrades to Buck Substation.
- Installation of approximately 67.4 miles of new 230 kilovolt (kV) transmission line between the Buck Substation located adjacent to the BEP and the Julian Hinds Substation located approximately sixty miles to the west.

¹ See Blythe Energy’s Petition for Post-Certification Amendment, October 2004.

² Blythe Area Regional Transmission Power Flow Analysis Study, March 7, 2003.

- The proposed transmission line route would generally follow Southern California Edison's (SCE's) existing 500 kV Devers-Palo Verde ("D-PV") transmission line.
- Transmission line structures would be concrete, single-pole structures.
- Upgrades to the Julian Hinds Substation.

Buck to Devers-Palo Verde Transmission Line Component:

- Upgrades to Buck Substation.
- Installation of approximately 6.7 miles of a new 230 kV transmission line (initially operated at 161 kV) between the Buck Substation and SCE's existing D-PV 500 kV transmission line.
- Transmission line structures would be concrete single-pole structures.
- Construction of a new 161 kV to 500 kV substation ("Midpoint Substation") at the point of interconnection with SCE's existing D-PV 500 kV transmission line.

The proposed transmission line modifications are for the sole purpose of allowing the delivery of the BEP I and II electrical output to the southern California CAISO-controlled electrical transmission system, referred to as "SP-15" for sale at market based rates. The transmission line is therefore a "merchant transmission line" unlike transmission lines that are owned and operated by Southern California Edison ("SCE") which are regulated by the California Public Utilities Commission ("CPUC"). Therefore the Blythe Energy Project Phase I and II transmission lines are not regulated by the CPUC, and therefore are not subject to the requirements to file an application for a Certificate of Public Convenience and Necessity ("CPCN") to the CPUC.

**No Operating Memorandum Submitted or Approved by the
Federal Energy Regulatory Commission (“FERC”)**

The applicant has not submitted an Operating Memorandum to the Federal Energy Regulatory Commission (“FERC”) which lays out the rate principles and operational responsibilities under which Blythe Energy LLC will develop, finance and construct its two proposed high-voltage transmission lines. The FERC on July 21, 2005 gave preliminary approval for the underlying rate principles for a proposed \$300 million transmission line that would bring 400 megawatts of additional transmission capacity to congested California markets.³

The Operating Memorandum, filed by Trans Bay Cable LLC, lays out the rate principles and operational responsibilities under which Trans Bay, the City of Pittsburg, California and Pittsburg Power Co. will develop, finance and construct a 55-mile high-voltage transmission line underneath San Francisco Bay. Project participants anticipate that the line will be completed by 2008.

Respectfully without even providing an application for an approval of their Operating Memorandum with the FERC California’s retail energy ratepayers have no method of determining under what rate principles and operational responsibilities under which Blythe Energy LLC will develop, finance and construct its two proposed high-voltage transmission lines?

Federal Energy Regulatory Commission Interstate Transmission Authority

Recent actions have been taken by the Federal Energy Regulatory Commission (“FERC”) that have broaden their regulatory authority over the interconnection of large generators to the transmission grid including merchant power generators like Blythe Energy LLC who sells their electricity at market based rates. The FERC has expanded its preemptive authority to regulate the underlying rate principles for proposed “merchant” transmission lines that bring additional transmission capacity to the congested California markets.

³ See FERC July 21, 2005 news release at <http://www.ferc.gov/press-room/pr-current/07-21-05-E-52.asp> at paragraph 2 in reference to 112 FERC ¶ 61,095 Order Accepting Operating Memorandum, Trans Bay Cable LLC, Docket No.ER05-985-000.

On June 16, 2005 the FERC issued an Order on Rehearing, under FERC Docket, RM02-1 *et al.*, *Standardization of Generator Interconnection Agreements and Procedures*, Order 2003 C.

In this order, we affirm, with certain clarifications, Order No. 2003-B,^[4] which, together with Order Nos. 2003 and 2003-A, governs interconnection of large generators to the transmission grid. The pro forma Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) required in those orders help prevent undue discrimination, preserve the reliability of the nation's transmission system, and lower prices for customers by allowing a variety of generation resources to compete in wholesale electricity markets. At its core, the Commission's orders ensure that all Generating Facilities that will make sales for resale of electric energy in interstate commerce are offered Interconnection Service on comparable terms. These orders benefit customers by establishing the just and reasonable terms and conditions for interconnecting to the transmission grid, while ensuring that reliability is protected.

In the case of the Blythe Energy LLC, transmission lines project since it is transmission constrained to only provide interstate commerce and since as the Commission Staff stated in their Motion to Compel “unless critical changes are made to the system, the majority of BEP II’s power will be stranded to southern California under long-term transmission arrangements” therefore without authorization by the FERC first development could not proceed on the Blythe Energy LLC, transmission lines project, because if a wholesale sale of electric energy in interstate commerce is occurring, the FERC has jurisdiction over the transaction or service, even if the transaction occurs over a “local distribution” facility.

⁴ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 FR 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003) (Order No. 2003), order on reh'g, Order No. 2003-A, 69 FR 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004) (Order No. 2003-A), order on reh'g, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2005) (Order No. 2003-B). See also Notice Clarifying Compliance Procedures, 106 FERC ¶ 61,009 (2004).

The Federal Power Act ("FPA") gives the FERC the authority to regulate "all facilities" used for transmission and for the wholesale sale of electric energy in interstate commerce under what is called the Open Access Transmission Tariff ("OATT"). This is demonstrated by the June 16, 2005 Order on Rehearing, under FERC Docket, RM02-1 *et al.*, *Standardization of Generator Interconnection Agreements and Procedures*, Order 2003 C, which was on the pro forma Large Generator Interconnection Procedures ("LGIP") and Large Generator Interconnection Agreement ("LGIA") which required in those orders which attempt to prevent undue discrimination, preserve the reliability of the nation's transmission system, and lower prices for customers by allowing a variety of generation resources to compete in wholesale electricity markets. At its core, the FERC's orders ensured that all Generating Facilities that will make sales for resale of electric energy in interstate commerce are offered Interconnection Service on comparable terms.⁵

Request for Rehearing

50. SoCal Edison argues that the Commission must exercise jurisdiction over all wholesale generator interconnections, including those to "local distribution" facilities never previously used by wholesale customers. SoCal Edison says that the Commission incorrectly asserts that there are three categories of facilities (transmission, "local distribution," and dual use) when only two actually exist (transmission and "local distribution"). SoCal Edison says that a D.C. Circuit opinion finds that only two categories exist, and wholesale service over "local distribution" facilities is Commission-jurisdictional.^[6] SoCal Edison concludes that because all interconnections to distribution facilities are to "local distribution" facilities, all such interconnections should be treated the same for jurisdictional purposes, and jurisdiction should depend solely on whether the generator makes sales at wholesale. SoCal Edison therefore requests that the Commission rule that it has jurisdiction

⁵ See 111 FERC ¶ 61,401 FERC Issuance 20050616-3071 at paragraphs 50 to 52.

⁶ SoCal Edison cites Detroit Edison Co. v. FERC, 334 F.3d 48, 51 (D.C. Cir. 2003) ("[W]hen a local distribution facility is used in a wholesale transaction, FERC has jurisdiction over that transaction pursuant to its wholesale jurisdiction under FPA § 201(b)(1).") and DTE Energy Co. v. FERC, 394 F.3d 954 (D.C. Cir. 2005) (applying a two category analysis).

over all interconnections to "local distribution" facilities for the purpose of making wholesale sales.

Commission Conclusion

51. We disagree with SoCal Edison that we should assert jurisdiction over all interconnections that could be used for wholesale sales, including the situation in which the Interconnection Customer seeks to interconnect to a "local distribution" facility being used exclusively for retail sales and thus is not available for service under an OATT at the time the Interconnection Request is made. In Order No. 2003, the Commission explained that the rule applies to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission filed OATT.^[7] Thus, our assertion of jurisdiction over interconnections rested on two grounds: first, and primarily, our FPA jurisdiction over "transmission" facilities, which may be used for wholesale sales or unbundled retail sales and which are subject to an OATT; and, second, our FPA jurisdiction over wholesale sales which require the use of "local distribution" facilities and thus such facilities become subject to an OATT for purposes of the wholesale sales. We concluded that applying our interconnection rules to facilities already subject to an OATT would properly respect the jurisdictional bounds recognized by the courts in upholding Order No. 888 and subsequent cases.^[8] To adopt SoCal Edison's position and interpret our authority more broadly, however, would allow a potential wholesale seller to cause the involuntary conversion of a facility previously used exclusively for state-jurisdictional interconnections and delivery, and subject to the exclusive jurisdiction of the state, into a facility also subject to the

⁷ Order No. 2003 at P 804. Pursuant to Order No. 888, as upheld by the courts, facilities subject to an OATT are "transmission" facilities and facilities used for wholesale sales, whether labeled "transmission," "distribution," or "local distribution." Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,969, 31,980 (1996), order on reh'g, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000) (TAPS v. FERC), aff'd sub nom. New York v. FERC, 535 U.S. 1 (2002); see TAPS v. FERC, 225 F.3d at 696 (noting that the Commission's "assertion of jurisdiction over all wholesale transmissions, regardless of the nature of the facility, is clearly within the scope of its statutory authority").

⁸ See Detroit Edison Co. v. FERC, 334 F.3d 48 (D.C. Cir. 2003); DTE Energy Co. v. FERC, 394 F.3d 954 (D.C. Cir. 2005).

Commission's interconnection jurisdiction – a result that we believe crosses the jurisdictional line established by Congress in the [Federal Power Act] FPA.

52. **FPA section 201(b)(1) gives the Commission the authority to regulate "all facilities" used for transmission and for the wholesale sale of electric energy in interstate commerce.**^{9]} The same FPA section denies the Commission jurisdiction "over facilities used in local distribution" except as specifically provided in Parts II and III of the FPA.^[10] **The Court of Appeals for the D.C. Circuit recently explained this provision as meaning that, if a wholesale sale of electric energy in interstate commerce is occurring, the Commission has jurisdiction over the transaction or service, even if the transaction occurs over a "local distribution" facility.**¹¹ **[Emphasis added]**

The evidence of Blythe Energy LLC providing interstate commerce is the FERC Order accepting Blythe Energy, LLC's 6/5/02 filing of Original Pages 1 through 4 to its FERC Electric Tariff, Original Volume 1, & grants waiver of FERC's notice requirement under ER02-2018, in which the FERC finds.¹²

Additionally, Blythe Energy requests authority to engage in the sale of ancillary services at market-based rates into the markets administered by the California ISO, Pennsylvania/New Jersey/Maryland Independent System Operator (PJM ISO), New York Independent System Operator (New York ISO), and New England Power Pool/ISO New England (NEPOOL/ISO New England) markets, and such additional geographical markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. Please be advised

⁹ 16 U.S.C. § 824a(b)(1) (2000).

¹⁰ *Id.*

¹¹ *Detroit Edison Co. v. FERC*, 334 F.3d 48, 51 (D.C. Cir. 2003); *accord Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 696 (D.C. Cir. 2000) (TAPS) (noting that "FERC's assertion of jurisdiction over all wholesale transmissions, regardless of the nature of the facility, is clearly within the scope of its statutory authority," and that the statute and case law support the proposition that the Commission has the authority to regulate "all aspects" of wholesale transactions).

¹² See FERC Issuance 20020912-3019 Order accepting Blythe Energy, LLC's 6/5/02 filing of Original Pages 1 through 4 to FERC Electric Tariff, Original Volume 1, & grants waiver of FERC's notice requirement under ER02-2018 issued September 12, 2002 at paragraph 6 and 7.

that consistent with Calhoun Power Company I, LLC, 96 FERC ¶ 61,056 (2001), your request is granted, but this does not relieve Blythe Energy of the requirement to have current and complete tariffs on file with the Commission under 18 C.F.R. § 35.1 (2002).

Acceptance of Blythe Energy's market-based rate tariff is subject to any tariff condition adopted by the Commission in Docket No. EL01-118-000, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001). Within 15 days of the date of issuance of an order adopting a tariff condition in Docket No. EL01-118-000, Blythe Energy is directed to make a compliance filing in the instant proceeding to amend its tariff accordingly.

Conclusions

Until such time as California's retail energy ratepayers can determine under what rate principles and operational responsibilities by which Blythe Energy LLC will develop, finance and construct its two proposed high-voltage transmission lines which requires approval of an Operating Memorandum and an Open Access Transmission Tariff with the FERC the BEP II's power will be stranded to California eliminating its ability to deliver any additional energy capacity for California's benefit. Therefore there exists no evidence at this time that the Blythe Transmission Line Docket # 99-AFC-8C Amendment is more than mere conjecture. The 520 MW Blythe Energy LLC Project Phase I is transmission congested to California while the 520 MW Blythe Energy LLC Project Phase II is unfeasible.

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